

## § 442.10

likely to cause, serious injury, harm, impairment, or death to an individual receiving care in a facility.

*New admission* means the admission of a Medicaid recipient who has never been in the facility or, if previously admitted, had been discharged or had voluntarily left the facility. The term does not include the following:

(a) Individuals who were in the facility before the effective date of denial of payment for new admissions, even if they become eligible for Medicaid after that date.

(b) If the approved State plan includes payments for reserved beds, individuals who, after a temporary absence from the facility, are readmitted to beds reserved for them in accordance with § 447.40(a) of this chapter.

[43 FR 45233, Sept. 29, 1978, as amended at 51 FR 24491, July 3, 1986; 53 FR 1993, Jan. 25, 1988; 54 FR 5358, Feb. 2, 1989; 56 FR 48865, Sept. 26, 1991; 59 FR 56235, Nov. 10, 1994]

## Subpart B—Provider Agreements

### § 442.10 State plan requirement.

A State plan must provide that requirements of this subpart are met.

### § 442.12 Provider agreement: General requirements.

(a) *Certification and recertification.* Except as provided in paragraph (b) of this section, a Medicaid agency may not execute a provider agreement with a facility for nursing facility services nor make Medicaid payments to a facility for those services unless the Secretary or the State survey agency has certified the facility under this part to provide those services. (See § 442.101 for certification by the Secretary or by the State survey agency).

(b) *Exception.* The certification requirement of paragraph (a) of this section does not apply with respect to religious nonmedical institutions as defined in § 440.170(b) of this chapter.

(c) *Conformance with certification condition.* An agreement must be in accordance with the certification provisions set by the Secretary or the survey agency under subpart C of this part for ICFs/MR or subpart E of part 488 of this chapter for NFs.

(d) *Denial for good cause.* (1) If the Medicaid agency has adequate docu-

## 42 CFR Ch. IV (10–1–04 Edition)

mentation showing good cause, it may refuse to execute an agreement, or may cancel an agreement, with a certified facility.

(2) A provider agreement is not a valid agreement for purposes of this part even though certified by the State survey agency, if the facility fails to meet the civil rights requirements set forth in 45 CFR parts 80, 84, and 90.

[45 FR 22936, Apr. 4, 1980, as amended at 56 FR 48865, Sept. 26, 1991; 59 FR 56235, Nov. 10, 1994; 64 FR 67052, Nov. 30, 1999]

### § 442.13 Effective date of provider agreement.

The effective date of a provider agreement with an NF or ICF/MR is determined in accordance with the rules set forth in § 431.108.

[62 FR 43936, Aug. 18, 1997]

### § 442.14 Effect of change of ownership.

(a) *Assignment of agreement.* When there is a change of ownership, the Medicaid agency must automatically assign the agreement to the new owner.

(b) *Conditions that apply to assigned agreements.* An assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued, including, but not limited to, the following:

(1) Any existing plan of correction.

(2) Any expiration date for ICFs/MR.

(3) Compliance with applicable health and safety requirements.

(4) Compliance with the ownership and financial interest disclosure requirements of §§ 455.104 and 455.105 of this chapter.

(5) Compliance with civil rights requirements set forth in 45 CFR parts 80, 84, and 90.

(6) Compliance with any additional requirements imposed by the Medicaid agency.

[45 FR 22936, Apr. 4, 1980, as amended at 53 FR 20495, June 3, 1988; 59 FR 56235, Nov. 10, 1994]

### § 442.15 Duration of agreement for ICFs/MR.

(a) Except as specified under § 442.16, the duration of an agreement may not exceed 12 months.

(b) The agreement must be for the same duration as the certification period set by the survey agency. However, if the Medicaid agency has adequate documentation showing good cause, it may make an agreement for less than this period.

(c) FFP is available for services provided by a facility for up to 30 days after its agreement expires or terminates under the conditions specified in § 441.11 of this subchapter.

[43 FR 45233, Sept. 29, 1978, as amended at 47 FR 31532, July 20, 1982; 59 FR 56235, Nov. 10, 1994]

#### **§ 442.16 Extension of agreement for ICFs/MR.**

A Medicaid agency may extend a provider agreement for a single period of up to 2 months beyond the original expiration date specified in the agreement if it receives written notice from the survey agency, before the expiration date of the agreement, that extension will not jeopardize the patients' health and safety, and—

(a) Is needed to prevent irreparable harm to the facility or hardship to the recipients in the facility; or

(b) Is needed because it is impracticable to determine, before the expiration date, whether the facility meets certification requirements.

[43 FR 45233, Sept. 29, 1978, as amended at 52 FR 32551, Aug. 28, 1987; 53 FR 20495, June 3, 1988; 59 FR 56235, Nov. 10, 1994]

#### **§ 442.30 Agreement as evidence of certification.**

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for NF and ICF/MR services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if CMS determines that—

(1) The survey agency failed to apply the applicable requirements under subpart B of part 483 of this chapter for NFs or subpart I of part 483 of this chapter, which set forth the conditions of participation for ICFs/MR.

(2) The survey agency failed to follow the rules and procedures for certification set forth in subpart C of this

part, subpart E of part 488, and § 431.610 of this subchapter;

(3) The survey agency failed to perform any of the functions specified in § 431.610(g) of this subchapter relating to evaluating and acting on information about the facility and inspecting the facility;

(4) The agency failed to use the Federal standards, and the forms, methods and procedures prescribed by CMS as required under § 431.610(f)(1) or § 488.318(b) of this chapter, for determining the qualifications of providers; or

(5) The survey agency failed to adhere to the following principles in determining compliance:

(i) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(ii) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically, surveyors will directly observe the actual provision of care and services to residents, and the effects of that care, to assess whether the care provided meets the needs of individual residents;

(iii) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(iv) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(v) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(6) The survey agency failed to assess in a systematic manner a facility's actual provision of care and services to residents and effects of that care on residents.

(7) Required elements of the NF survey process fails to include all of the following:

(i) An entrance conference;

(ii) A resident-centered tour of facility;

(iii) An in-depth review of a sample of residents including observation, interview and record review;

(iv) Observation of the preparation and administration of drugs for a sample of residents;